

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-10-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case Nos. 684 and 922 of 2015

CrI.R.C.No. 684 of 2015:-

H.Sathak Ahmed Shaw

..Petitioner

VS

1.The Inspector of Police
J-9, Thuraipakkam Police Station
Kancheepuram District.

2.N.Dhanraj Kochar

3.Inderchand D.Kochar

4.D.Duresh Kumar Kochar

5.Naveen Kumar Kochar

6.Ramesh Kumar Kochar

7.Shrenic Kumar

8.Jitesh Kumar

9.Rajkumar

10.Anitha

11.Sarala

.. Respondents

(The respondents 2 to 11 are
impleaded as per the order of
this Court dated 13.08.2015
made in M.P.No.2 of 2015
in CrI.R.C.No. 684 of 2015)

CrI.R.C.No.922 of 2015:-

H.Sathak Ahmed Shaw

..Petitioner

1. The Inspector of Police
J-9, Thuraipakkam Police Station
Kancheepuram District.

2. Ramesh Kumar Kochar

3. Jitesh Kumar

4. Rajkumar

5. Anitha

6. Sarala

.. Respondents

Criminal Revision Case No.684 of 2015 filed under Section 401 of Cr.P.C. against the order dated 23.06.2015 made in C.M.P. No. 4353 of 2015 in C.C.No. 530 of 2007 on the file of the Judicial Magistrate, Alandur and to permit the petitioner to engage an Advocate to assist the prosecution of the case in C.C.No.530 of 2007 on the file of the Judicial Magistrate, Alandur.

For Petitioner : Mr.S.Doraisamy
in Crl.R.C.No.684/2015

For Respondent : Mr.T.Arul
in Crl.R.C.No.684/2015 Government Advocate (Crl.side)
for R.1

Mr.P.L.Narayanan for R.2

Mr.V.Balasubramanian
for R.3, R.5, R.7, R.8, R.9 and

R.10

Mr.R.Raksh for R.4

Mr.Kempraj for R.6

Service Awaited for R.11

Criminal Revision Case No.922 of 2015 filed under Section 401 of Cr.P.C. against the order dated 07.08.2015 made in C.M.P. No. 5494 of 2015 in C.M.P.No. 4964 of 2015 in C.C.No.530 of 2007 on the file of the Judicial Magistrate, Alandur, and to implead the petitioner as a party respondent in the discharge petition in C.M.P.No.4964 of 2015 on the file of the Judicial Magistrate, Alandur.

For Petitioner : Mr.S.Doraisamy
in Crl.R.C.No.922/2015

For Respondent : Mr.T.Arul
in Crl.R.C.No.922/2015 Government Advocate (Crl.side)
for R.1

Mr.Kempraj for R.2

Mr.V.Balasubramanian
for R.3 to R.5

Service Awaited for R.6

COMMON ORDER

The petitioner has filed the Criminal Revision Case No.684 of 2015 challenging the order dated 23.06.2015 made in C.M.P. No. 4353 of 2015 in C.C.No. 530 of 2007 on the file of the Judicial Magistrate, Alandur and to permit the petitioner to engage an Advocate to assist the prosecution of the case in C.C.No.530 of 2007 on the file of the Judicial Magistrate, Alandur.

2. The very same petitioner has filed Criminal Revision Case No.922 of 2015 challenging the order dated 07.08.2015 made in C.M.P. No. 5494 of 2015 in C.M.P.No. 4964 of 2015 in C.C.No.530 of 2007 on the file of the Judicial Magistrate, Alandur, and to implead him as a party respondent in the discharge petition in C.M.P.No.4964 of 2015 on the file of the Judicial Magistrate, Alandur.

3. According to the petitioner, he is the son of the defacto complainant Late M.S.Hameed. The defacto complainant had originally given a complaint on 04.08.2006 alleging that the accused had illegally grabbed the land of the defacto complainant's Company situated in Siruseri Village. On the basis of the complaint, the the respondent police has registered a case in Cr.No.815 of 2006 for the offences under Sections 408, 420, 468 and 120(b) IPC. The accused persons have filed a quash petition before this Court and during the pendency of the same, the defacto complainant died. The petitioner being the son of the defacto complainant and an aggrieved person, is interested in prosecuting the case by assisting the prosecution by engaging an Advocate and hence, he has filed a petition in C.M.P.No.4353 of 2015 before the Judicial Magistrate, Alandur. The Judicial Magistrate by order dated 23.06.2015 has dismissed the said petition and hence, the Crl.R.C.No.684 of 2015 is filed. The petitioner has also filed a petition in C.M.P.No.5494 of 2015 seeking to implead him as a party in the discharge petition filed by the accused. The said petition was dismissed by order dated 07.08.2015. Aggrieved against the same, the Crl.R.C.No. 922 of 2015 is filed.

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4. I have heard the arguments of both sides. By consent, the main revisions were taken up for final disposal.

5. Now the short point for consideration in Crl.R.C.No. 684 of 2015 is that whether the son of the deceased defacto complainant can be permitted to assist the prosecution and at what stage he can be permitted to assist the prosecution. Earlier, the accused persons have filed a petition under Section 482 Cr.P.C. seeking to quash the charge sheet filed against them in Crl.O.P.No.24609 of 2007 and subsequently, the said quash petition was withdrawn on 17.11.2014. Earlier, at the instance of the revision petitioner, the prosecutor has been changed twice. Thereafter, another application has been filed by a Director of the defacto complainant's Company seeking to assist the prosecution, which is not accepted by the petitioner on the ground that some of the Directors are also accused. Therefore, he would contend that as the son of the defacto complainant and he being the legal representative of the deceased defacto complainant, he has got every right to assist the prosecution. The contention of the learned counsel appearing for the petitioner can be accepted, because, Section 301 (2) of Cr.P.C., gives the petitioner the right to assist the prosecution since, he is not cited as a witness. It is relevant to extract Section 301(2) of Cr.P.C., which is to the effect that, "If any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case".

6. The next important question to be decided is at what stage the petitioner can be permitted to assist the prosecution. The answer to that question is that, the petitioner can be permitted to assist the prosecution only during the course of trial and not before that. He cannot assist in the discharge petition. In the quash petition filed by the fourth accused in Crl.O.P.No.15866 of 2015, the petitioner filed a impleading petition to implead him as a party respondent and this Court by order dated 24.07.2015 allowed the impleading petition and dismissed the quash petition filed by fourth accused. In the said quash petition, the grievance of the petitioner has already been taken note of. Hence, it is suffice to state that the petitioner is hereby permitted to assist the present Public Prosecutor only during the course of trial and the present Magistrate is directed to decide the case in C.C.No.530 of 2007, on merits and in accordance with law. The petitioner, being the legal representative is permitted to assist the prosecution only during the course of trial and it is made clear that no other legal representative of the deceased defacto complainant shall file any similar application seeking the same relief. The Criminal Revision Case No.684 of 2015 is disposed of.

7. Insofar as CrI.R.C.No.922 of 2015 is concerned, in view of the order passed hereinabove, no order is necessary in this revision and hence, this Criminal Revision Case is closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To

1. The Chief Judicial Magistrate,
Kancheepuram
2. The Judicial Magistrate
Alandur.
3. The Inspector of Police
J-9 Thuraipakkam Police station
Kancheepuram district.

+2 ccs to Mr.S.Doraisamy, Advocate (sr.57421, 57422)
+1 cc to Mr.PL.Narayanan, Advocate (sr.57310)

CrI.R.C. Nos. 684 and
922 of 2015

ca (co)
cp 30/10/2015

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